

July 9, 2008

The Honorable Thad Viers  
Member, House of Representatives  
P. O. Box 31231  
Myrtle Beach, South Carolina 29588

Dear Representative Viers:

In a letter to this office you requested an opinion regarding the legality of a builder's inventory being marketed and transferred through ticket sales on the internet giving buyers of the tickets a chance to win a home from the builder. You stated that "...a buyer would purchase a ticket for a chance to win one of five homes; pricing would be based off the total of all homes and maximize the ticket buyer's chances at winning a home." You questioned whether this plan would violate State laws regarding raffles.

As set forth in an opinion of this office dated September 21, 2007, "...a raffle whereby an individual buys a ticket for the opportunity to win a prize based upon a random drawing is considered a lottery...However, other games or events may also be considered a lottery." In Darlington Theaters, Inc. v. Coker, et al., 190 S.C. 282, 292, 2 S.E.2d 782, 786 (1939), the State Supreme Court determined that a lottery is

...a species of gaming, which may be defined as a scheme for the distribution of prizes or things of value by lot or chance among persons who have paid, or agreed to pay, a valuable consideration for the chance to win a prize.

Consistent with such, the three elements of a lottery are (1) the offering of a prize; (2) the payment of some consideration; and (3) the determination of the winner by chance. All three elements must be present in any scheme in order for it to be considered a lottery.

S.C. Code Ann. § 16-19-10 states that

[w]hoever shall publicly or privately erect, set up, or expose to be played or drawn at or shall cause or procure to be erected, set up, or exposed to be played, drawn, or thrown at any lottery under the denomination of sales of houses, lands, plate, jewels, goods, wares, merchandise, or other things whatsoever or for money or by any undertaking whatsoever, in the nature of a lottery, by way of chances, either by dice, lots, cards, balls, numbers, figures, or tickets or who shall make, write, print or

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publish, or cause to be made, written, or published any scheme or proposal for any of the purposes aforesaid is guilty of a misdemeanor and, upon conviction, must be fined one thousand dollars and imprisoned for one year. One-third of the fine imposed shall be paid to the person, if any, who informed law enforcement officials or other appropriate authorities about the violation which led to the conviction. Each violation constitutes a separate offense. (emphasis added).

Article XVII, Section 7 of the State Constitution provides that

[o]nly the State may conduct lotteries, and these lotteries must be conducted in the manner that the General Assembly provides by law. The revenue derived from the lotteries must first be used to pay all operating expenses and prizes for the lotteries. The remaining lottery revenues must be credited to a separate fund in the state treasury styled the 'Education Lottery Account', and the earnings on this account must be credited to it. Education Lottery Account proceeds may be used only for education purposes as the General Assembly provides by law.

The game of bingo, when conducted by charitable, religious, or fraternal organizations exempt from federal income taxation or when conducted at recognized annual state and county fairs, is not considered a lottery prohibited by this section.

As described by you in our telephone conversation, an individual would purchase a ticket for the opportunity to win the house by means of a chance drawing. Consistent with the above, in the opinion of this office, such a scheme would have all the necessary elements of a lottery as outlined above and, therefore, would be prohibited. As referenced by Section 16-19-10, a lottery involving the "sales of houses...(and)...lands" is specifically prohibited.

I hope this provides you with the information you need. If you have any questions, please advise.

Sincerely,

Henry McMaster  
Attorney General

By: Charles H. Richardson  
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:

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Robert D. Cook  
Deputy Attorney General